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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JENS ERIK SORENSON,
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13 vs. Plaintiff,
14 TARGET CORPORATION,
15 Defendant.

CASE NO. 09cv56 BTM (CAB)

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
OF MAGISTRATE JUDGE'S ORDER**

16 On July 27, Plaintiff Jens Erik Sorenson, acting as Trustee for the Sorenson Research
17 and Development Trust ("Sorenson"), filed a Motion for Reconsideration of and Objections
18 to the Magistrate Judge's Order. For the reasons explained below, Sorenson's Motion is
19 **DENIED.**

20 **I. BACKGROUND**

21 On January 14, 2009, Sorenson filed its Complaint against Defendant Target
22 Corporation ("Target"), alleging patent infringement. On February 27, 2009, the Clerk
23 entered default against Defendant. On March 24, 2009, the Court granted the parties' joint
24 motion to set aside default. On the same day, the Court also granted the parties' joint motion
25 to allow Plaintiff to file a corrected complaint and Defendant to file an answer thereto. The
26 Court simultaneously permitted filing of Plaintiff's corrected Complaint. On March 31, 2009,
27 Defendant filed its Answer.

28 On July 9, 2009, Plaintiff filed a motion requesting the scheduling of an early neutral

1 evaluation conference before Magistrate Judge Bencivengo. On July 16, 2009, Magistrate
 2 Judge Bencivengo issued an order denying Plaintiff's motion [Docket No. 23]. On July 27,
 3 2009, Plaintiff filed the instant motion objecting to Magistrate Judge Bencivengo's order and
 4 asking this Court to reconsider it. On September 11, 2009, Target filed a Response to
 5 Plaintiff's Motion. At the same time, Target filed a Motion to Stay which is set for hearing on
 6 November 13, 2009. Plaintiff filed a Reply on September 16, 2009.

7 8 **II. STANDARD**

9 A judge may designate a magistrate judge to hear and determine nondispositive
 10 pretrial matters. 28 U.S.C. § 636(b)(1)(A). The district court may reconsider any pretrial
 11 matter where it is shown that the magistrate judge's order was clearly erroneous or contrary
 12 to law. Id. Federal Rule of Civil Procedure 72(a) also permits a party to file objections to a
 13 magistrate judge's order with the district court. "The district court in the case must consider
 14 timely objections and modify or set aside any part of the order that is clearly erroneous or
 15 contrary to law." Fed. R. Civ. P. 72(a).

16 17 **II. DISCUSSION**

18 Plaintiff argues that the Court should set aside Magistrate Judge Bencivengo's order
 19 denying its motion to schedule an early neutral evaluation conference ("ENE conference")
 20 because it was clearly erroneous or contrary to law. Plaintiff contends that Patent Local Rule
 21 2.1(a) requires parties to meet before the assigned magistrate judge within 60 days of the
 22 Defendant's first appearance in the case. Plaintiff further claims that Magistrate Judge
 23 Bencivengo's refusal to schedule an ENE conference pursuant to Patent Local Rule 2.1(a)
 24 is an effective stay of the action that prevents Plaintiff from prosecuting its case.

25 The Court disagrees. As Defendant points out, Patent Local Rule 1.3 provides that
 26 "[t]he court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth
 27 in these Patent Local Rules based on the court's schedule or the circumstances of any
 28 particular case, including, *without limitation*, the complexity of the case or the number of

1 patents, claims, products, or parties involved.” Magistrate Judge Bencivengo properly
2 considered the circumstances of this particular case in modifying the deadlines for scheduling
3 the ENE conference. This case is one of over twenty related cases before this Court. The
4 vast majority of the cases are presently stayed. The Court denied Plaintiff’s own initial
5 motion to consolidate the cases simply as premature due to the pending stays. See
6 Sorenson v. Black & Decker Corp., No. 06cv1572 BTM (CAB) (S.D. Cal. May 5, 2008) (Order
7 Denying Motion to Consolidate Cases [Docket No. 274]). If the Court eventually consolidates
8 the cases after it lifts the stays, it will be more efficient for Magistrate Judge Bencivengo
9 to enter a comprehensive scheduling order for all of the cases at that time, as she noted in
10 her order.

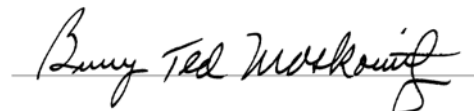
11 Thus, the Court finds that Magistrate Judge Bencivengo’s order was not clearly
12 erroneous or contrary to law. Moreover, the Court notes that Defendant’s Motion for Stay
13 in this case is currently set for hearing on November 13, 2009. Plaintiff’s request for an ENE
14 conference will be moot if the Court grants the stay.

15 16 **III. CONCLUSION**

17 For the reasons discussed above, the Court **DENIES** Plaintiff’s Motion for
18 Reconsideration of and Objections to the Magistrate Judge’s Order.

19 **IT IS SO ORDERED.**

20 DATED: September 30, 2009

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22 Honorable Barry Ted Moskowitz
23 United States District Judge
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